

Letter of Findings: 04-20120348
Gross Retail Tax
For the Tax Years 2009 - 2011

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ISSUES

I. Gross Retail Tax – Trade-in Allowance.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-1-5; IC § 6-2.5-1-6; IC § 6-2.5-2-1; IC § 6-2.5-4-1; IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Sales Tax Information Bulletin 28S (February 2008); Sales Tax Information Bulletin 28S (December 2009); Sales Tax Information Bulletin 28S (April 2012); Sales Tax Information Bulletin 28WC (August 2008).

Taxpayer protests the denial of trade-in allowance.

STATEMENT OF FACTS

Taxpayer is an Indiana dealer selling recreational vehicles ("RVs"), travel trailers, and parts. Pursuant to an audit, the Indiana Department of Revenue ("Department") determined that, during 2009, 2010, and 2011 tax years, Taxpayer failed to collect and remit the gross retail tax ("sales tax") on several of Taxpayer's sales where Taxpayer used a discount when a customer traded in a travel trailer to purchase an RV, or when a customer traded in an RV to purchase a travel trailer. The Department's audit assessed sales tax, interest, and penalty. Taxpayer protested the assessment of tax. A hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Gross Retail Tax – Trade-in Allowance.

DISCUSSION

The only issue that Taxpayer protested concerns RV sales for which Taxpayer's customers traded in travel trailers, and travel trailer sales for which the Taxpayer's customers traded in RVs ("trade-ins"). For these sales, Taxpayer deducted the trade-in amount ("trade-in allowance") from the sales price of the RVs or travel trailers they sold in the trade-in, depending on the transaction. Taxpayer thus claimed that it was entitled to the "trade-in allowance" because the trade-ins were "like kind" exchanges, and not subject to sales tax. The Department's audit disagreed that travel trailers and RVs were "like kind" vehicles, and assessed Taxpayer sales tax based on the full amount of the sales price.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Indiana imposes a sales tax on retail transactions. IC § 6-2.5-2-1 states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires tangible personal property in a retail transaction is liable for the tax on the transaction and shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

IC § 6-2.5-1-2 defines a retail transaction as "a transaction of a retail merchant that constitutes selling at retail as described in IC [§] 6-2.5-4-1... or that is described in any other section of IC [§] 6-2.5-4." IC § 6-2.5-4-1(a) provides that "[a] person is a retail merchant making a retail transaction when he engages in selling at retail." IC § 6-2.5-4-1(b) further explains that a person sells at retail when he "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration."

Taxpayer, a dealer selling RVs and travel trailers, is a retail merchant and, therefore, is responsible for collecting and remitting the sales tax.

IC § 6-2.5-1-5(b) provides that "[g]ross retail income' does not include that part of the gross receipts attributable to... (1) the value of any tangible personal property received in a like kind exchange in the retail transaction, if the value of the property given in exchange is separately stated on the invoice, bill of sale, or similar document given to the purchaser." IC § 6-2.5-1-6 states:

- (a) "Like kind exchange" means the reciprocal exchange of personal property between two (2) persons, when:
 - (1) The property exchanged is of the same kind or character, regardless of grade or quality; and
 - (2) The persons exchanging the property both own the property prior to the exchange.
- (b) A "like kind exchange" may be a part of a transaction involving additional consideration other than the exchanged property.
- (c) Notwithstanding subsection (a), a "like kind exchange" does not occur when:
 - (1) The transaction involves more than two (2) persons; or

(2) One (1) party to the transaction, through agreement or negotiation with the second party, acquires personal property for the primary purpose of exchanging that property for like kind property held by the second party.

At the time that the sales occurred, Sales Tax Information Bulletin 28S (February 2008, 200801130 Ind. Reg. 045080050NRA) and Sales Tax Information Bulletin 28S (December 2009, 20100127 Ind. Reg. 045100029NRA) provided that:

The deduction for a trade-in allowance applies only to "like-kind exchanges" in which the motor vehicle or trailer to be traded in is owned and titled in the name of the customer. A like-kind exchange means a motor vehicle traded for another motor vehicle or a trailer traded for another trailer. A trade-in of a motor vehicle for a trailer is not a "like-kind exchange" and is not deductible in the calculation of the amount of the taxable gross retail income received by the dealer. Non-like-kind exchanges are merely another form of a payment to the dealer and do not reduce the dealer's gross retail income.

Because of this, the audit found that the trade-ins where purchasers traded in their RVs upon purchasing Taxpayer's travel trailers, or where purchasers traded in their travel trailers upon purchasing Taxpayer's RVs, were not "like-kind exchanges."

However, Sales Tax Information Bulletin 28S was recently updated, and while the statement above is still included, an exception to the above statement was added that is pertinent to the case at hand. Sales Tax Information Bulletin 28S (April 2012, 20120530 Ind. Reg. 045120259NRA) now provides that:

Note: one exception to the general rule that a motor vehicle traded in for a trailer does not constitute a "like-kind exchange" is when a motorized recreational vehicle is traded in for a non-motorized recreational vehicle. In such a case, the Department considers the motorized and non-motorized recreational vehicles to be like-kind.

Because this update to Sales Tax Information Bulletin 28S clarifies what was already Departmental policy, for those trade-ins where purchasers traded in their RVs upon purchasing Taxpayer's travel trailers, or where purchasers traded in their travel trailers upon purchasing Taxpayer's RVs, these would be considered "like-kind exchanges," and therefore would be exempt from sales tax.

It should also be noted that, in some instances, Taxpayer also accepted a boat as a trade-in for a motor home or a travel trailer. A boat is a watercraft. A motor home is a motorized recreational vehicle. A travel trailer is a non-motorized recreational vehicle. Boats and motor homes or boats and travel trailers are not items of the same kind. Sales Tax Information Bulletin 28WC (August 2008, 20081001 Ind. Reg. 045080728NRA) provides that "only a watercraft may be traded for another watercraft" and that "a vehicle taken in trade for a watercraft is not a like-kind trade, per statute, and thus does not reduce the taxable selling price." Therefore these transactions do not qualify for the like kind exchange treatment. Taxpayer's protest as it pertains to these assessments is denied.

Upon a supplemental audit, the Department will recalculate the tax due.

FINDING

Taxpayer's protest is sustained in part and denied in part, as stated above.

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